

IN THE UNITED STATES COURT OF APPEALS  
FOR THE THIRD CIRCUIT

ANTHONY GILMORE,	:	CIVIL DIVISION
Petitioner	:	
	:	Civil Action No. 04-358E
v.	:	(M.D.Pa. No. )
	:	
MARILYN S. BROOKS, SUPERINTENDENT,	:	
STATE CORRECTIONAL INSTITUTE AT	:	
ALBION,	:	
Respondent	:	
And	:	
BRADLEY FAULK, DISTRICT ATTORNEY	:	
FOR ERIE COUNTY, PENNSYLVANIA, AND	:	
THOMAS CORBETT, ATTORNEY GENERAL	:	
FOR PENNSYLVANIA,	:	
Additional Respondents	:	

**PETITIONER ANTHONY GILMORE'S APPLICATION FOR LEAVE  
TO PROCEED IN FORMA PAUPERIS ON CERTIFICATE OF APPEALABILITY**

AND NOW, comes Anthony Gilmore, pro se, the Petitioner in the above-entitled proceeding, and request leave to proceed in forma pauperis on certificate of appealability, and in support avers:

1. I am the Petitioner in the above-entitled matter, and that I am indigent as defined by law.

2. Because of my poverty I am unable to prepay or to pay the fees and cost associated with this proceeding, or to give security therefore.

3. I believe I am entitled to relief because I am indigent.

4. The issues I intend to present on appeal are briefly stated as follows:

I. PETITIONER IS ACTUALLY INNOCENT OF THE OFFENSES FOR WHICH HE WAS CONVICTED, AND HIS CLAIM IS THEREFORE NOT SUBJECT TO THE ONE-YEAR LIMITATION PERIOD UNDER 28 U.S.C. § 2244(d) OF THE ANTITERRORISM AND EFFECTIVE DEATH PENALTY ACT OF 1996, Pub. L. No. 104-132, 110 Stat. 1214 (1996), Effective April 24, 1996.

A. PETITIONER'S CLAIM OF INNOCENCE IS BOTH PROCEDURAL AND SUBSTANTIVE, IMPLICATES A FUNDAMENTAL MISCARRIAGE OF JUSTICE, AND IS PREDICATED ON EVIDENCE NOT ADDUCED AT TRIAL COUPLED WITH A CONTENTION THAT BOTH HIS TRIAL AND APPELLATE COUNSEL RENDERED INEFFECTIVE ASSISTANCE IN VIOLATION OF THE SIXTH AND FOURTEENTH AMENDMENTS TO THE UNITED STATES CONSTITUTION.

**AFFIDAVIT IN SUPPORT OF REQUEST  
FOR IN FORMA PAUPERIS STATUS**

In further support of this application, Petitioner Gilmore answers the following:

1. I have no spouse.
2. Aside from my prison work detail, I am not employed.
3. My last job was ~~WA~~
4. In the last twelve (12) months I have received no money from any of the below sources:
  - a. Business, profession, or any form of self employment;
  - b. Rent payments, interest, or dividends;
  - c. Pension, annuities, or life insurance payments;
  - d. inheritance, or other sources such as welfare, social security, or unemployment. See Prison Certification Form attached for gifts.
5. I have the following amount of monies credited to my prison \_\_\_\_\_.
6. I have no checking accounts

7. I neither own nor have interest in real estate, stocks, bonds, notes, automobiles, or other valuables.

8. I have no persons dependent upon me.

9. No persons, businesses, or other organizations owe me money.

10. I have no average monthly expenses.

11. I expect no changes in income, expenses, assets or liabilities in the next twelve (12) months.

12. With the exception of copying and postage fees, I do not plan on paying anyone any money for services, including preparation and completion of this form, in connection with this appeal.

13. The only additional information I can provide that can be useful in determining this application at this time is the certified prison accounting statement/affidavit attached hereto.

I declare under penalty that the foregoing is true and correct, and that because of my poverty I am unable to pay the fees, cost, and security associated with this appeal, and that I am entitled to redress under United States law. 28 U.S.C. § 1621.

<u>Anthony Gilmore</u>	<u>27</u>	<u>331-70-1401</u>
Signature	Age	Social Security No.
Anthony Gilmore		
Inmate No. EB-8234		
SCI ALBION		
10745 ROUTE 18		
ALBION, PA 16475-0002		


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Respondent	:	
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BRADLEY FAULK, DISTRICT ATTORNEY	:	
FOR ERIE COUNTY, PENNSYLVANIA, AND	:	
THOMAS CORBETT, ATTORNEY GENERAL	:	
FOR PENNSYLVANIA,	:	
Additional Respondents	:	

**CERTIFICATE OF SERVICE**

I, Anthony Gilmore, hereby certify that on March 31, 2006, a copy of the foregoing Notice of Appeal and Application for Leave to Proceed In Forma Pauperis on Certificate of Appealability was served by placing same, first class postage prepaid, in the United States Mail addressed to:

RAQUEL L. CROSS, ESQUIRE, ADA  
OFFICE OF THE DISTRICT ATTORNEY  
ERIE COUNTY COURTHOUSE  
140 WEST 6th STREET  
ERIE, PA 16501

  
ANTHONY GILMORE

**CERTIFICATION**

I, Sandra L. Gorniak, hereby certify that the Applicant, Anthony Gilmore, Inmate No. EB-8234, an inmate confined here at the State Correctional Institute at Albion, Pennsylvania, has the sum total of \$63.54 on his prison account to his credit at this institution.

I further certify that the Applicant, James E. Holden, likewise has the following securities to his credit according to said institute's records. unknown

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DATED March, 2006.

April 4, 2006

s/ Sandra L. Gorniak  
Authorized Officer of  
the State Correctional  
Institute at Albion

PA DEPT. OF CORRECTIONS  
BUREAU OF DATA PROCESSING  
REMOTE PRINT TIME 10:35

INMATE ACCOUNTS SYSTEM  
ACCOUNT STATEMENT

RUN IAS410  
DATE 4/04/2006  
PAGE 1

CURR. INST SC1A5  
ACCT. STATUS OPEN

INMATE NUMBER	NAME LAST	FIRST	MI	OLD BALANCE
EB8234	GILMORE	ANTHONY		15.71

BATCH #	DATE MO DY YEAR		TRANSACTION DESCRIPTION		TRANSACTION AMOUNT	BALANCE AFTER TRANSACTION
2920	02-14-2006	13	PERSONAL GIFT FROM MARTINEZ, MILDRED	H880805	50.00	65.71
2924	02-14-2006	44	ORGANIZATIONAL C.E.O. BAKE SALE		-8.50	57.21
2992	02-21-2006	37	POSTAGE		-.24	56.97
8052	02-21-2006	32	ALB COMMISSARY FOR 2/21/2006		-38.98	17.99
9055	02-24-2006	10	INMATE EMPLOYMENT ALB PAYROLL 2006 - 01 GRP 4		32.40	50.39
9055	02-24-2006	10	INMATE EMPLOYMENT ALB PAYROLL 2006 - 01 GRP 4		8.00	58.39
8059	02-28-2006	32	ALB COMMISSARY FOR 2/28/2006		-38.54	19.85
8065	03-06-2006	32	ALB COMMISSARY FOR 3/06/2006		-7.06	12.79
3189	03-13-2006	13	PERSONAL GIFT FROM MARTINEZ, MILDRED	H883127	50.00	62.79
3197	03-13-2006	44	ORGANIZATIONAL C.E.O. BAKE SALE		-10.00	52.79
8072	03-13-2006	32	ALB COMMISSARY FOR 3/13/2006		-25.50	27.29
3219	03-14-2006	13	PERSONAL GIFT FROM MARTINEZ, MILDRED	H880663	50.00	77.29
3283	03-20-2006	37	POSTAGE		-1.35	75.94
3283	03-20-2006	37	POSTAGE		-1.35	74.59
3283	03-20-2006	37	POSTAGE		-1.35	73.24
8079	03-20-2006	32	ALB COMMISSARY FOR 3/20/2006		-34.39	38.85
9081	03-22-2006	10	INMATE EMPLOYMENT ALB PAYROLL 2006 - 02 GRP 4		32.40	71.25
9081	03-22-2006	10	INMATE EMPLOYMENT ALB PAYROLL 2006 - 02 GRP 4		8.38	79.63
8086	03-27-2006	32	ALB COMMISSARY FOR 3/27/2006		-16.09	63.54
NEW BALANCE AS OF 04-04-2006 ----->						63.54